



MEMORANDUM  
COUNTY EXECUTIVE OFFICE  
ADMINISTRATION  
County of Placer

TO: Honorable Board of Supervisors DATE: January 25, 2022

FROM: Todd Leopold, County Executive Officer

SUBJECT: Authorize Teleconference Attendance by Members of County Committees and Commissions Pursuant Government Code Section 54953.

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**ACTION REQUESTED:**

Authorize teleconference attendance for members of County committees and commissions pursuant to Assembly Bill 361 as codified in Government Code section 54953.

**BACKGROUND:**

The Ralph M. Brown Act (“Brown Act”) governs the noticing, agendas, and meetings of a “legislative body”. “Legislative body” is defined in the Brown Act to include the governing body of a local agency<sup>1</sup> and “a commission, committee, board or other body of a local agency, whether permanent or temporary, decision-making, or advisory, *created by charter, ordinance, resolution or formal action of a legislative body.*” (Emphasis added, Government Code section (“GC §”) 54952(b).) The Brown Act has always had provisions to allow for members of a legislative body to teleconference (phone or video) into a meeting from a remote location, but it is seldom used due to the posting and public accommodation requirements for the same<sup>2</sup>.

After Governor Newsom proclaimed a state of emergency due to COVID-19 on March 4, 2020, he issued Executive Order N-29-20 on March 17, 2020. This executive order suspended many of the public meeting requirements of the Brown Act, including the requirements related to teleconferencing attendance<sup>3</sup>. This executive order remained into effect until September 16, 2021, when the Governor signed Assembly Bill 361 (“AB361”) into law. AB361 amended portions of the Brown Act to allow the use of teleconferencing attendance by a legislative body without the required teleconference posting and public accommodation requirements under GC §54953(e)(3) provided certain findings are made<sup>4</sup>:

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<sup>1</sup> In our case the Board of Supervisors is the governing body of the County of Placer, the local agency.

<sup>2</sup> For a member of a legislative body to use teleconferencing to participate in a public meeting, the agenda must identify the location of said teleconferencing on the agenda, post the agenda at said location and “adopt reasonable regulations to adequately protect the statutory or constitutional rights of the parties or the public appearing before the legislative body of a local body.” (GC §54953(b)(3) This last provision means that if there is no central meeting location that is open to the public, then accommodations must be made at one or more of the teleconferencing facilities for the public to participate.

<sup>3</sup> See footnote 2.

<sup>4</sup> AB361 amended other portions of the Brown Act but these are not germane to the present discussion and/or the Board already complies with the same. AB361 as codified in Government Code §54953 is included in its entirety in Attachment 1 to this memo.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b)<sup>5</sup>, the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1)<sup>6</sup>, and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, “state of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

The above findings are required to be made every thirty (30) days in order to continue teleconferencing without the Brown Act posting and public accommodation requirements until the Governor’s Proclamation of Emergency is terminated or January 1, 2024, whichever is earlier. Government Code Section 54953(e)(3) provides that a legislative body shall adopt such findings.

It is recommended that the Board as the governing body<sup>7</sup> adopt such a finding for all Board formed committees and commissions and renew the same every thirty (30) days through the Board’s consent agenda. If certain committees or commissions wish to adopt the findings there will be the need for County staff to track the same to ensure these are renewed every thirty (30) days<sup>8</sup>.

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<sup>5</sup> See Attachment 1.

<sup>6</sup> (A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees. (GC §54953(e)(1)(A-C))

<sup>7</sup> Again, under GC §54942(a), the governing board is also included in the definition of “legislative body”.

<sup>8</sup> This process is available per statute until the Governor rescinds the proclamation of state of emergency for COVID-19 or until January 1, 2024, whichever is sooner.

This requires a noticed public hearing be scheduled within the thirty (30) day period to renew the findings. For committees or commissions that do not meet monthly this could result in the County being forced to schedule additional meetings that may only be for adoption of these findings. For committees or commissions that have monthly meeting schedules but have no other items to discuss during a particular meeting, the County will be forced to schedule a meeting just for renewal of the findings. With numerous committees and commissions that fall under the definition of “legislative body” in this County, the “per committee” approach has the potential to result in confusion, additional staff time to monitor the deadlines for renewing the findings and potential unnecessary additional meetings.

Staff requests the Board consider authorizing teleconferencing for all the Board formed committees and commissions to provide flexibility during the current Omicron surge. This would allow members of the committee or commission the option to attend virtually without the posting and public accommodation requirements under the Brown Act<sup>9</sup>. If the Board grants this authority supported by the requisite statutory findings, the renewal of findings can be scheduled on consent every thirty (30) days in the same manner that reaffirmations of local emergencies are currently scheduled. It should be noted that virtual attendance also requires all actions be taken by roll call vote and if there is any disruption in the virtual meeting feed, the meeting must be discontinued until the feed is restored.

**Action Requested:** Authorize teleconference attendance for members of County committees and commissions pursuant to ~~Assembly Bill 361 as codified in~~ Government Code §54963 and supported by the following findings:

1. The Governor of the State of California enacted a Proclamation of Emergency on March 4, 2020 pursuant to Section 8625 of the California Emergency Services Act and the same remains active (“Proclamation”).
2. The Board of Supervisors only reconsiders the circumstances of the Proclamation for purposes of authorizing members of Board formed committees and commissions the option to attend meetings via teleconferencing as permitted in GC section 54953(e) without compliance with the posting and public accommodation requirements in GC section 54953(b)(3).
3. The state of emergency articulated in the Proclamation continues to directly impact the ability of members of Board appointed committees and commission to meet safely in person. While the County is able to manage protection of its members and the public in County facilities, most of the committees and commissions meet at non-County facilities where there is no central means to manage social distancing or any other protective measures.
4. In making these findings the Board of Supervisors does not endorse or support the Proclamation or take any position on COVID-19. Rather, the Board wishes to provide the option for virtual attendance to members of Board formed

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<sup>9</sup> Please note, this action applies only to Board-formed committees and commission and does not apply to independent special districts or joint power authorities.

- committees and commissions during the time the state of emergency exists.
5. If members of a Board formed committee or commission attend virtually, all votes taken on action items shall be by roll call. The chair of such a committee or commission shall halt the meeting should a disruption in the audio or virtual feed occur until such time as the disruption is resolved.
  6. No individual Board member or County staff member may authorize teleconference attendance by members of a Board formed committee or commission absent these findings, which must be renewed every thirty (30) days by the Board, or in absence of the same, independent action by each Board formed committee or commission to adopt and renew said findings.

**FISCAL IMPACT**

None.

**ATTACHMENT**

1: Government Code section 54953

## ATTACHMENT 1

Effective: September 16, 2021

West's Ann.Cal.Gov.Code § 54953

### **§ 54953. Meetings to be open and public; attendance; teleconferencing**

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b)(1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c)(1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section

3511.1, during the open meeting in which the final action is to be taken.  This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d)(1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e)(1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment.  The agenda shall identify and

include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G)(i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, "state of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.